

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



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July 27, 1995

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FCC MAIL ROOM

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

Re: CC Docket No. 94-54; Ex Parte Presentation

Dear Mr. Caton:

In accordance with Section 1.1206(a)(1) of the FCC's Rules, two copies of the attached ex parte presentation are being submitted to your office for inclusion in the public record of CC Docket No. 94-54.

Sincerely,

Ellen S. LeVine  
Counsel for California

ESL:cip

Enclosures

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## PUBLIC UTILITIES COMMISSION

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July 27, 1995

VIA FEDERAL EXPRESSRegina Keeney  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

JUL 28 1995

FCC MAIL ROOM

Re: CC Docket No. 94-54; Ex Parte Presentation

Dear Ms. Keeney:

The California Public Utilities Commission ("CPUC") recently obtained a copy of reply comments filed by AT&T Corporation ("AT&T") in the above-referenced docket which for the first time asks the Federal Communications Commission ("FCC") to preempt state authority over interconnection rates charged by a local exchange carrier ("LEC") to a commercial mobile radio service ("CMRS") provider. In doing so, AT&T mischaracterizes the nature of CPUC authority over LEC-to-CMRS interconnection, and otherwise provides no factual support for its preemption argument. The FCC should reject AT&T's belated attempt to reverse the FCC's express finding not to preempt state authority over LEC-to-CMRS intrastate interconnection rates.

Specifically, AT&T claims that the CPUC has "proposed local exchange competition regimes that restrict cellular carriers' ability to obtain mutual compensation and secure LEC interconnection at rates comparable to other local carriers." AT&T Reply at 8. That claim is simply wrong. For over ten years in California, the interconnection arrangements between the cellular carriers and LEC have been the result of good faith, private negotiations, not regulatory intervention. Nothing in CPUC regulation either presently or as proposed restricts or prevents the cellular carriers from negotiating different terms and conditions, including the ability to obtain mutual compensation and to obtain interconnection at rates comparable to other local carriers. Indeed, in comments by AirTouch cited by AT&T, AirTouch confirms that although it has not yet obtained mutual compensation agreements with LECs, "such agreements are likely to be made as a result of future negotiations." AT&T Reply at 7. Nowhere in that discussion does AirTouch mention any state regulation which, in AT&T's view, allegedly impedes a cellular carrier's ability to negotiate reasonable interconnection agreements. Indeed, to date no cellular carrier has filed a formal complaint with the CPUC claiming that the LEC failed to negotiate in good faith with the carrier -- an action that the cellular carrier could readily have taken had there been a basis for such claim.

Second, even if AT&T's characterization of CPUC interconnection proposals to promote local exchange competition was correct (which it is not), such proposals were not adopted. The adopted rules were not confined to "wireline" services. In its order dated July 24, 1995 promoting local exchange carrier competition in California, the CPUC expressly provided that LECs and those carriers which qualify as competitive local carriers, as defined in the order, shall terminate local calling traffic on a mutual exchange basis.

AT&T nevertheless asserts that the FCC should preempt all state authority over LEC-to-CMRS interconnection rates to ensure that interconnection is "economically rational" and that the LEC does not "discriminate against CMRS providers with respect to intrastate as well as interstate rates." AT&T Reply at 6,7. However, as AT&T itself must acknowledge, the FCC expressly declined to preempt state authority over LEC-to-CMRS interconnection rates. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 at ¶¶ 228, 231. AT&T thus attempts to recharacterize federal preemption as one over "interconnection arrangements between LECs and CMRS providers," and not rates. AT&T's argument is directly contradicted by AT&T itself in its repeated references to intrastate interconnection rates, referenced above. See also AT&T Reply at 10 (FCC should preempt "state regulation and LEC practices that deny mutual compensation and nondiscriminatory co-carrier interconnection rates to CMRS providers.").[1]

Finally, contrary to AT&T's characterization, other parties have not advocated federal preemption of state authority over intrastate LEC-to-CMRS interconnection rates.[2] In fact, in the section of AirTouch's comments cited by AT&T in support of AT&T's preemption argument, AirTouch never even mentions federal preemption or the need therefor, but instead is confident that it can negotiate agreements with the LECs that provide for mutual compensation. AirTouch Comments at 8, cited in AT&T Reply at 7. AT&T's argument thus represents nothing more than a belated

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1 In addition, contrary to AT&T's assertion, interconnection rates can be separated to permit state and federal regulation just as rates for access services and ONA services -- other forms of interconnection -- have been separated by jurisdiction for years.

2 Indeed, in its opening comments AT&T itself never expressly sought preemption of state authority over intrastate LEC-to-CMRS interconnection rates. AT&T Comments at 20-21 (discussing CMRS-to-CMRS interconnection).

Regina Keeney  
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attempt to insert into this proceeding a new preemption issue not previously addressed.

In sum, other than its conclusory claims about how states will frustrate FCC policy, AT&T offers no factual basis (nor is there any) that supports such preemption. The FCC should therefore reject as a matter of substance and procedure AT&T's last minute argument to preempt state authority over intrastate LEC-to-CMRS interconnection rates.

In accordance with Section 1.1206(a)(1) of the FCC's Rules of Practice and Procedure, two copies of this presentation are being submitted to the Secretary for inclusion in the public record of this proceeding.

Sincerely,

*Ellen S. LeVine*

Ellen S. LeVine  
Counsel for CPUC

ESL:cip

cc: Michael Wack  
Stan Wiggins